

CLERK'S OFFICE U.S. DIST. COURT
AT ROANOKE, VA
FILED
MAR 16 2007
JOHN F. CORCORAN, CLERK
BY: *[Signature]*
DEPUTY CLERK

Plaintiff.

Civil Action No. 5:06cv00084

 \mathbf{y}_i

MEMORANDUM OPINION

et al.,

By: Samuel G. Wilson

United States District Judge

Defendants.

Case 5:06-cv-00084-SGW-JGW Document 38 Filed 03/16/07 Page 1 of 3 Pageid#: 411

28 U.S.C. § 1447(c) provides that, “An order remanding [a] case may require payment of just costs and any actual expenses, including attorney fees, incurred as a result of the removal.”

The Supreme Court has held that, “Absent unusual circumstances, courts may award attorney’s fees under § 1447(c) only where the removing party lacked an objectively reasonable basis for seeking removal.” Martin v. Franklin Capital Corp., 126 S. Ct. 704, 711 (2005). This test recognizes “the desire to deter removals sought for the purpose of prolonging litigation and imposing costs on the opposing party, while not undermining Congress’ basic decision to afford defendants a right to remove as a general matter, when the statutory criteria are satisfied.” Id.

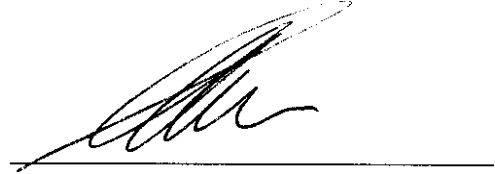
While a close question, the court does not find that Great Eastern lacked an objectively reasonable basis for seeking removal. Great Eastern relied primarily on Miller v. Washington Workplace, Inc., 298 F. Supp. 2d 364 (E.D. Va. 2004), to support its removal and realignment arguments. In Miller, the court allowed removal and realignment on similar facts, but offered no substantive analysis.¹ As this court discussed in its remand opinion, Great Eastern’s reliance on Miller was misplaced, as the case does not stand for the proposition that a federal court should realign parties to effectuate removal where the only federal question appears in the state court defendants’ counterclaim. Bluegreen Corp., 2006 WL 3391504, at *6. While there is no question that Great Eastern improperly removed the case and misread precedent, Great Eastern arguably had an objectively reasonable basis for removal. Furthermore, there is no evidence that

¹ The Miller court merely mentioned the removal and realignment in the “Background” section during its discussion of the case’s procedural history.

Great Eastern sought removal simply to prolong litigation and impose costs on Defendants.

Therefore, this court denies the Defendants' motion for costs and attorney's fees.

ENTER: This 16th day of March, 2007.

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke, positioned above a solid horizontal line.

United States District Judge